IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

LATOYA TURNER
Plaintiff

V. No. 3:98-CV-117-B-A

AMERICAN PLASTIC TOYS, INC.
Defendant

MEMORANDUM OPINION

This cause comes before the court upon the defendant's motion for summary judgment. Upon due consideration of the defendant's memoranda and exhibits,[1] the court is ready to rule.

FACTS

The plaintiff has not responded to the defendant's motion for summary judgment and thus, the defendant's recitation of the facts is uncontroverted. Therefore, the court will accept the defendant's statement of facts as true, except where the record reveals a factual dispute clearly apparent to the court. See Carpenter v. Gulf States Mfrs., Inc., 764 F. Supp. 427, 429 (N.D. Miss. 1991). While the court may not grant summary judgment by default simply because the plaintiff has failed to respond, Id., (citing Hibernia Nat'l Bank v. Administracion Central Sociedad Anonima, 776 F.2d 1277, 1279 (5th Cir. 1985)), the court may accept the movant's uncontroverted statement of facts and grant summary judgment where appropriate. Carpenter, 764 F. Supp. at 429 (citing Eversly v. Mbank Dallas, 843 F.2d 172, 174 (5th Cir. 1988)).

The plaintiff began employment with the defendant on or about December 9, 1996. The plaintiff was employed in a production position, preparing and packaging toys for shipment. In early 1998, the plaintiff began to have problems meeting the required standard of production. On February 23, March 10, and March 11, 1998, the plaintiff received written warnings for failure to meet production standards. Upon receiving her third warning, the plaintiff was terminated by the

[1] The plaintiff has failed to respond to the defendant's motion for summary judgment.

plant manager, Bobby Mathis. The plaintiff's "Notice of Separation" states that the plaintiff was terminated due to "three write-ups for violation of work rule #4–failure to achieve production after adequate training."

At the time of her termination, the plaintiff was approximately three months pregnant. The plaintiff filed a charge of discrimination with the EEOC on May 19, 1998, alleging that she was terminated in violation of the Pregnancy Discrimination Act. Upon receiving notice of a right to sue, the plaintiff filed this suit asserting a cause of action for discrimination in violation of the Pregnancy Discrimination Act and the Americans with Disabilities Act. The defendant has moved for summary judgment.

LAW

On a motion for summary judgment, the movant has the initial burden of showing the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 325, 91 L. Ed. 2d 265, 275 (1986) ("the burden on the moving party may be discharged by 'showing'...that there is an absence of evidence to support the non-moving party's case"). Under Rule 56(e) of the Federal Rules of Civil Procedure, the burden shifts to the non-movant to "go beyond the pleadings and by...affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" Celotex Corp., 477 U.S. at 324, 91 L. Ed. 2d at 274. That burden is not discharged by "mere allegations or denials." Fed. R. Civ. P. 56(e). All legitimate factual inferences must be made in favor of the non-movant. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 91 L. Ed. 2d 202, 216 (1986). Rule 56(c) mandates the entry of summary judgment "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp., 477 U.S. at 322, 91 L. Ed. 2d at 273. Before finding that no genuine issue for trial exists, the court must first be satisfied that no reasonable trier of fact could find for the non-movant. Matsushita Elec. Indus. v. Zenith Radio Corp., 475 U.S. 574, 587, 89 L. Ed. 2d 538, 552 (1986).

Title VII of the Civil Rights Act of 1964 prohibits various forms of employment

discrimination, including discrimination on the basis of sex. Urbano v. Continental Airlines, 138 F.3d 204, 205-206 (5th Cir. 1998). With the passage of the Pregnancy Discrimination Act in 1978, Congress amended Title VII to state as follows:

> The terms "because of sex" or "on the basis of sex" include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes...as other persons not so affected but similar in their ability or inability to work....

42 U.S.C. § 2000e(k). A claim under the Pregnancy Discrimination Act is analyzed like Title VII discrimination claims in general. To establish a prima facie case of discrimination, the plaintiff may show: (1) that she was a member of a protected class; (2) that she was qualified for the position; (3) that she suffered an adverse employment action; and (4) that others similarly situated were treated more favorably. Id. at 206 (citing McDonnell-Douglas Corp. v. Green, 411 U.S. 792, 36 L. Ed. 2d 668 (1973)). Of course, the plaintiff may always present a prima facie case by providing direct evidence of discrimination. Id. Once the plaintiff presents a prima facie case, the defendant must articulate a legitimate, non-discriminatory reason for the employment action. McDonnell-Douglas Corp. v. Green, 411 U.S. 792, 802-805, 36 L. Ed. 2d 668, 677-679 (1973). If the defendant is able to do so, the burden of production shifts back to the plaintiff to produce evidence that the defendant's articulated reason is merely a pretext for discrimination. Id.

Although the defendant could assert a strong argument that the plaintiff has failed to present a prima facie case, the court will assume for purposes of the motion for summary judgment that the plaintiff has made the initial showing under the McDonnell-Douglas framework so as to shift the burden of production to the defendant to articulate a legitimate, non-discriminatory reason for the plaintiff's termination. The defendant has asserted that the plaintiff was terminated after three warnings for failure to meet production standards. Accordingly, the burden shifts back to the plaintiff to show that the defendant's articulated reason is merely a pretext for discrimination. The plaintiff has failed to do so. The defendant has submitted uncontroverted evidence that Bobby Mathis was the sole individual responsible for the plaintiff's

termination and that Mathis had no knowledge of the plaintiff's pregnancy. Although the plaintiff allegedly told three people at American Plastic Toys that she was pregnant, all three have stated under oath that they played no role in the plaintiff's termination and that they told no one else of the plaintiff's pregnancy. Since the person ultimately responsible for the adverse employment decision did not know of the plaintiff's pregnancy at the time of the plaintiff's termination, he could not have acted with the intent to discriminate. The plaintiff has presented absolutely no evidence to support the contention that her pregnancy was a determinative factor in her termination. Accordingly, the court finds that the plaintiff's claim for discrimination under the Pregnancy Discrimination Act should be dismissed.

As for the plaintiff's claim under the Americans with Disabilities Act, the court finds that it, too, should be dismissed. Pregnancy and related medical conditions do not, absent unusual circumstances, constitute a disability within the meaning of the Americans with Disabilities Act. Villarreal v. J.E. Merit Constructors, Inc., 895 F. Supp. 149, 152 (S.D. Tex. 1995).

CONCLUSION

For the foregoing reasons, the court finds that the defendant's motion for summary judgment should be granted. An order will issue accordingly.

THIS, the ____ day of May, 1999.

NEAL B. BIGGERS, JR.
CHIEF JUDGE